



The National Association for the Employment of People who are Blind

EXECUTIVE MEETING OF THE BOARD OF DIRECTORS

APRIL 12, 2023

3:30 P.M. ET VIA ZOOM

Directors present were Ms. Branch, Mr. Fernald, Mr. Gould, Mr. Johnson, Mr. Lafollette, Mr. Meehan, Mr. Mittman, Mr. Steiner, Ms. Watson. Mr. Katz was absent. There was a quorum.

Mr. Mittman said that he would like to start to take the NAEPB on a more proactive path going forward. To start this process, he prepared the draft strategy document which was sent out prior to the meeting for discussion.

Mr. Mittman also shared with the board that he, along with Ms. Branch and Mr. Johnson had met with NIB today to discuss the five asks to NIB that were developed at the retreat. There are action items which he will share with the board.

- NAEPB has joined the CPI lawsuit with NIB and AVRE. A response from GSA is expected today.
- NAEPB has filed an OIG complaint regarding the conflict of interest by Jeff Koses.
- NAEPB has developed a response to the three Commission draft compliance policies. The updated letter was sent out today for discussion.
- Mr. Lafollette has formed a working group to reply to the NPRN Regarding Competition put out by the Commission.
- Mr. Steiner is leading a group to work on and update the By-Laws.

There have been questions from the membership asking what else we can do. Mr. Mittman thought the draft strategy document would help to answer these questions.

The board discussed strategy 1 to ensure the AbilityOne commission does not receive additional funding to support unnecessary oversight and/or policies damaging to the program.

It was agreed that if this strategy is pursued it will be kept quiet and not publicized to a larger audience and targeted at a small group. Mr. Steiner suggested writing a letter to all the Commission members explaining to them how the Commission policies affect the NPAs and their

concerns and thoughts. Mr. Lynch agreed it would be helpful to educate the members, but in some cases, they are only concerned about how policies affect their agencies.

After discussion, it was agreed this strategy would be taken on and Mr. Mittman said he would keep the board informed of progress and meetings on the Hill.

Strategy 2 is to have greater influence on the AbilityOne commission's policies by making sure they provide the opportunity and time for NAP feedback to incorporate into their policies. This tactic is to inform the Commission's private citizen members so that they are aware the commission may be exceeding their authority.

Mr. Steiner said that once any message is put out, everyone needs to be united as a group. Mr. Fernald said that this would need to be explained to the membership so that they understand the importance of this action.

Strategy 3 is to combat the AbilityOne program erosion which was discussed at the retreat. The first tactic is to work with Congress to pass legislation setting a 1% goal for DoD's utilization of the AbilityOne program. The second tactic is to investigate the ETS violations causing the AbilityOne program erosion.

It was agreed that there would probably not be any legislation outside of the NDAA passed by this Congress. There was discussion about how this could start the process of having the JWOD act and receiving more negative reactions from outside groups.

After discussion it was agreed that it was time to start taking action even with the risks that are involved.

There was a motion made by Mr. Johnson to approve the three strategies presented to the Board. Ms. Watson seconded the motion.

Mr. Mittman asked for votes on each strategy:

Strategy 1: Object to the Commission's request for a budget increase. This was approved by all directors present except Mr. Meehan.

Strategy 2: Communicate with the Commission members outside of the private citizens to ensure they are aware of the NPA feedback on the recent policies. Approved unanimously by all directors present.

Strategy 3: Combat AbilityOne program erosion by meeting with Congressional members and requesting a Congressional hearing. Approved unanimously by all directors present.

The meeting was adjourned at 4:30 p.m.



National Association for the *Employment* of People who are Blind

April 14, 2023

U.S. AbilityOne Commission
355 E Street SW
Suite 325
Washington, DC 20024

To Whom It May Concern,

The National Association for the Employment of People who are Blind (NAEPB) appreciates the opportunity to provide feedback on the AbilityOne Commission's proposed compliance policies 51.400, 51.403, and 51.405. NAEPB is the nation's leading organization for advancing employment for people who are blind. We represent nonprofit agencies (NPAs) from across the United States in support of their mission to strengthen and maximize job opportunities for people who are blind.

The AbilityOne Commission is moving swiftly in releasing policies and then quickly revising the proposals. NAEPB believes this speed is detrimental by creating an arduous process that does not allow for thoughtful input. We recommend the Commission engage a small group of representatives from small to large NPAs while it is developing the policies to get input. Then, utilize the Compliance Council, formed at its request to get initial feedback. To date, the Compliance Council has received policies only hours before they are released to the public leaving no time to react. We suggest the Commission send draft policies to the Compliance Council, allow time for feedback, then revise the policies and release them to the public for comment.

Policy 51.400

The AbilityOne Commission's proposed compliance policies regarding NPA responsibilities relating to meeting Program requirements, participating in Central Nonprofit Agency (CNA) inspections, technical assistance, evaluations, and training leave some questions. The Commission's role is an important one in ensuring the integrity of the Program and moving its employment mission forward; however, NAEPB is concerned about overreach into areas that go beyond their scope of control as defined by law and may duplicate examinations, audits, and reviews being performed by other entities including governmental agencies. The Commission must focus on audits relevant to AbilityOne statutes.

NAEPB supports compliance visits that review well-communicated statutory standards and allows remediation when an NPA is non-compliant. These visits must refrain from overreaching into other areas, like contract compliance, where a contracting officer monitors performance.

Policy 51.403

NAEPB applauds the AbilityOne Commission for the expanded use of other governmental documentation. Additionally, the use of assessments by independent qualified licensed professionals is an important option given that not all employees have accessed a government program relating to their disability. However, despite this, the draft policy remains unclear about what documentation will be accepted and for what period of time it secures eligibility. Furthermore, all determinations certified by a licensed physician should be accepted regardless of affiliation, as a professional's license has legal obligations that define conflicts of interest.

Blindness under JWOD (41 USC Ch. 85 §8501) has a very specific definition and states, "The term "blind" refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees." Therefore, the definition in the policy must match the statutory language.

NAEPB is also concerned about the requirement of an eligibility determination when changing a labor position or updating government documentation every seven years. Employees working at NPAs move to other positions for a variety of reasons not limited to upward mobility, cross training opportunities, or because they choose to access another open position. The diagnosis of legal blindness for most is permanent, and therefore, subsequent evaluations are not needed. Requesting a person receive an assessment every seven years places an unnecessary burden on the NPA for unneeded and unwarranted documentation.

The most concerning part of this policy is that transmitting patient data to another entity may breach HIPAA requirements. People should not have to forgo their right to privacy just because they have a disability.

Policy 51.405

The AbilityOne Program, as established by JWOD, is inherently an employment program. The goal is to create employment for people who are blind or have other significant disabilities through NPAs. The statutory role of the Program is not that of Vocational Rehabilitation (VR). The policy put forth creates a duplicity of services. State VR Agencies already offer vocational services and receive funding to do so. This puts undue burdens on the CNAs and NPAs where there is no statutory obligation. NAEPB understands a workgroup will convene to address funding; however, it is unrealistic that program fees and good faith commitments will cover the costs.

NAEPB sees the value in a PCEP; however, NPAs are not training centers but employment providers. JWOD has a strict 75 percent labor requirement. Despite this, NPAs have employed people who are blind outside direct labor in all areas of the organization, including executive leadership, with no legal obligation to do so. In fact, 14 NPA CEOs are blind or visually impaired. Additionally, NPAs have built their business based on their statutory obligations and are not designed to administer VR-style training programs.

NPAs operate like many other employers. They offer feedback through regular reviews, leadership or other developmental training, and upward mobility. Without any statutory obligation but in support of the NPAs' mission, many have set up programs where direct labor employees may seek additional resources and training to move to a career outside of the NPA. This is based on individual employee goals.

The 51.405 Policy assumes employees at NPAs are somehow unhappy with their employment or that the NPA is a training program, both of which are summarily untrue. NPAs offer competitive wages and benefits and are committed to employee development based on each individual's goals. People who are blind work at NPAs because they have chosen this career.

Thank you for the opportunity to provide feedback.

Sincerely,

Jeffrey Mittman
President
NAEPB



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Draft Strategy Document

Background

The AbilityOne Commission issued its Strategic Plan in June 2022. The plan details an aggressive agenda of unfunded mandates and agency overreach that does not support the agency's mission of creating employment for people who are blind or have significant disabilities. Since the Commission issued its Strategic Plan, it has pushed out draft policies relating to compliance, competition, subcontracting, and its upcoming year budget justification. None of these plans demonstrate how the Commission will maintain or grow employment, which was the primary intent of the Javits-Wagner-O'Day (JWOD) Act.

Strategy 1

Short-term

Ensure the AbilityOne Commission does not receive additional funding to support unnecessary oversight and/or policies damaging to the Program.

Target Audience - Congress

Asks

- Congress should not pass the AbilityOne Commission's budget with the requested increase.
- Congress must hold hearings to investigate the Commission's new draft policies to ensure they align with Congressional intent related to JWOD.

Messaging

- The AbilityOne Commission is requesting additional funding to launch the oversight of services already provided by the Rehabilitation Services Administration and Vocational Rehabilitation.
 - Services are duplicative
- The AbilityOne Commission is legislating through policy rather than statute and regular order.
- The AbilityOne Commission's actions are causing a decline in jobs, and they have no growth strategy to change course.

Tactics

- Outreach to Congressional offices
 - Build a Congressional target list
 - Draft a leave-behind piece explaining the challenges and proposed solutions

Strategy 2

Short-term

Influence the AbilityOne Commission's policies.

Target Audience - Commission

Ask

- The AbilityOne Commission must provide the opportunity and time for NPA feedback and incorporate the input into its policies.
 - Policy development should include representation from a small group of agencies of all sizes prior to drafting policies.
 - Draft policies should go to the Compliance Council for feedback and revision, when appropriate, before releasing to the public.
 - The revised draft policy should go to the public for comment and no revisions should be made until the comment period has closed.

Messaging

- Draft policies released to date demonstrate a lack of understanding of how NPAs operate.
- Collaboration between the AbilityOne Commission and NPAs will lead to better results and expanded employment for people who are blind.

Tactics

- Outreach to the AbilityOne Commission
 - NAEPB to send a letter to the AbilityOne Commission on behalf of its membership
 - NPAs to send letters to the AbilityOne Commission
 - NAEPB to create a letter template
 - Request NPAs send a letter will be made via the Public Policy Committee and CEOs via email from Jeff
 - Board members to make a follow-up ask of colleagues to encourage broad participation
 - NAEPB must review and provide feedback for draft policies released by the AbilityOne Commission.

Legal

- Work with NIB to determine available legal action to challenge untenable AbilityOne Commission policies.

Strategy 3

Ongoing

Combat AbilityOne Program erosion.

Ask 1

Target Audience - Congress

- Pass legislation setting a 1 percent goal for DoD's utilization of the AbilityOne Program.

Messaging

- Expanding DoD's participation with the AbilityOne Program over time will expand employment opportunities for people who are blind or have significant disabilities who otherwise face a 70 percent unemployment rate.
- The 898 Panel recommended an AbilityOne Program utilization goal in its final report to Congress.
- Without a goal, there is no transparency regarding the utilization of the AbilityOne Program, resulting in program erosion.

Tactics

- Outreach to Congress
 - Targeted meetings with HASC/SASC
 - NPA ask during May 10 DC fly-in
 - Coordinated NPA outreach during the NDAA process
 - Employee calls to Congressional offices

Ask 2

Target Audience - Congress

- Investigate ETS violations causing AbilityOne Program erosion.
 - Request a non-binding resolution
 - Request a GAO report

Messaging

- The AbilityOne Commission is neglecting to use its resources to enforce statutory procurement through the AbilityOne Program.
- The AbilityOne Program creates critical employment for people who are blind or have significant disabilities who otherwise face 70 percent unemployment.

Tactics

- Targeted meetings
- Grassroots campaign
 - Phone calls and letter writing from AbilityOne Program employees and family members
- Host a Congressional briefing during the Fall Conference
 - Brief reception afterward to meet constituents (Program employees/advocates)

Additional Actions

Customer

- The BSC Subcommittee is requesting letters of support from the Air Force and Army (in progress) regarding First Look and First Stop.

OIG

- NPAs to file OIG complaint each time an ETS violation occurs
 - NAEPB to create a template
 - NAEPB to create a repository to house filed complaints

Legal

- Work with NIB to file legal challenges where appropriate.
 - A lawsuit has been filed in the Consumer Platform Initiative (CPI) matter
 - Explore lawsuits against the Air Force and Army if they do not change course and the CPI lawsuit is successful